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September 21, 2006

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W. Room 711
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

SEP 21 2006

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Public Record



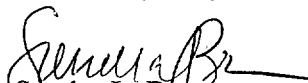
**RE: Docket No. 34918, Keokuk Junction Railway Co. d/b/a Peoria &
Western Railway – Lease and Operation Exemption – BNSF Railway
Company between Vermont and Farmington, Illinois**

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding please find an original and ten copies of the CONFIDENTIAL VERSION of the Motion to Compel Discovery and Response to KJRY's Request to Lift Housekeeping Stay filed under seal, and an original and ten copies of the PUBLIC VERSION of the Motion to Compel Discovery and Response to KJRY's Request to Lift Housekeeping Stay filed on behalf of Ameren Energy Fuels and Services Company. We have also enclosed three discs which contain a copy of the CONFIDENTIAL VERSION in Microsoft Word format and three discs which contain a copy of the PUBLIC VERSION in Adobe Acrobat format in accordance with 49 C.F.R. § 1104.3.

In addition, we have enclosed an extra copy of all the documents. Kindly indicate receipt and filing by time-stamping this copy and returning it to the bearer of this letter. Thank you for your attention to this matter.

Yours very truly,


Sandra L. Brown

Enclosures

Cc: David M. Konschnik, Office of Proceedings

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34918

**KEOKUK JUNCTION RAILWAY CO.,
d/b/a PEORIA & WESTERN RAILWAY
—LEASE AND OPERATION EXEMPTION—
BNSF RAILWAY COMPANY
BETWEEN VERMONT AND FARMINGTON, ILLINOIS**

**AMEREN ENERGY FUELS AND SERVICES COMPANY
MOTION TO COMPEL DISCOVERY AND
RESPONSE TO KJRY'S REQUEST TO LIFT HOUSEKEEPING STAY**

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**ATTORNEYS FOR AMEREN ENERGY FUELS AND
SERVICES COMPANY**

**ENTERED
Office of Proceedings
SEP 21 2006
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Public Record**

September 21, 2006

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**FINANCE DOCKET NO. 34918
VERIFIED NOTICE OF EXEMPTION**

**AMEREN ENERGY FUELS AND SERVICES COMPANY
MOTION TO COMPEL DISCOVERY AND
RESPONSE TO KJRY'S REQUEST TO LIFT HOUSEKEEPING STAY**

Pursuant to 49 C.F.R. §§ 1114.21 and 1114.31 (2006), Ameren Energy Fuels & Services Company ("AFS," individually or the designation "Ameren" will be used to collectively refer to Ameren's affiliated companies and impacted plant unless separate designation is necessary), moves the Surface Transportation Board ("Board") for an order compelling Keokuk Junction Railway Co. ("KJRY"), d/b/a Peoria & Western Railway ("PWRY") to submit to outside counsel for Ameren an entire, unredacted version of the lease agreement between KJRY and Burlington Northern Santa Fe Railway ("BNSF") which is the subject of KJRY's Verified Notice of Exemption ("Notice") filed on August 4, 2006 in this docket ("Lease Agreement"). KJRY has only produced a substantially redacted version of the Lease Agreement in response to the Request for Production of this document.¹

¹ It is Ameren's understanding, through correspondence with KJRY, that it is BNSF requiring the redactions to the Lease Agreement. Nevertheless, as Board precedent has established, no redactions are justified when producing documents to outside counsel or consultants, even of sensitive financial data. KJRY confirms its assertion that the redactions have been made at the request of BNSF in its Request to Lift Housekeeping Stay filed September 18 with the Board ("KJRY's Request to Lift Stay") at page 4.

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Discovery of the entire, unredacted Lease Agreement between KJRY and BNSF referenced in the Notice is necessary to enable outside counsel to fully assess the harm to Ameren pursuant to the transaction proposed by the Notice. The Notice very generally discusses a transaction whereby PWRY will lease and operate the portion of the BNSF Railway Yates City Subdivision between Vermont (Milepost 94.3) and Farmington (Milepost 52.20), in Fulton County, Illinois (“the Vermont Line”).² While KJRY has stated that PWRY will serve merely as a “handling carrier” the portions of the lease that have not been redacted show a different story (and the Notice makes no reference and provides no description of KJRY’s or PWRY’s³ alleged “handling carrier” status). In fact, the portions of the lease that Ameren’s outside counsel has been provided show that there are specific anti-competitive aspects in the Lease Agreement. At a minimum, the complete unredacted version must be produced to Ameren’s outside counsel in order to fully understand the harm that would result to Ameren from the proposed transaction. Ameren’s fiduciary duty to its shareholders would not be fulfilled by merely relying on KJRY’s assertions that no harm will come to Ameren.⁴ The housekeeping stay cannot and should not be

² Ameren notes that in KJRY’s Request to Lift Stay that KJRY has not even produced a complete version of the Lease Agreement to the Board for its “in-camera” review.

³ While Ameren has no particular issue with the KJRY d/b/a PWRY designation it is perplexing to Ameren how a common carrier can hold itself out under a new trade name without obtaining any specific STB authorization or notice. The case cited by KJRY in the Notice that allegedly shows that “PWRY is controlled by Pioneer Railcorp” contains no mention of PWRY in the case as an entity of Pioneer Railcorp. See Notice at page 3. In addition, Illinois business records indicate that KJRY is an inactive corporation and only PWRY is entitled to actively do business in Illinois.

⁴ See e.g., KJRY Request to Lift Stay at pp. 5, n3; 8; and 9.

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lifted until the unredacted lease has been produced to and reviewed by Ameren's outside counsel.

FACTUAL BACKGROUND

As noted above, on August 4, 2006, KJRY filed its Notice "to lease and operate" a 42.1 mile rail line owned by BNSF and running between Vermont and Farmington, Illinois in Fulton County, Illinois. Ameren has considerable concerns regarding this proposed transaction, including, but not limited to, that the Notice contains inconsistent information and that the transaction may result in significant competitive harm to the Duck Creek Power Plant ("Duck Creek"). Duck Creek is owned by Ameren Energy Generating Company ("AERG"), an affiliate of AFS, and is located along the line proposed to be leased to KJRY. In addition, Ameren recently made substantial investments at its Duck Creek plant to obtain the necessary approval and construct a build-out to KJRY's line that extends between La Harpe (Milepost 194.5) and Hollis (Milepost 118.5), Illinois⁵. This build-out has provided competitive access to the Union Pacific Railroad ("UP") for the Duck Creek plant at Hollis ("La Harpe – Hollis Line"). KJRY admits in its Request to Lift Stay in footnote 1 on page 3, that the proposed transaction contemplated by the Lease Agreement will result in KJRY being the only carrier capable of serving the plant via the two different routes.

⁵ This is the former Toledo, Peoria & Western Corporation line that KJRY was permitted to acquire in STB Finance Docket No. 34335 under the Board's "feeder line" provisions. It is worth noting that there were actions taken by KJRY after KJRY had obtained the Board's February 7, 2005 decision in the feeder line case that further supports the fact that Ameren's fiduciary duty to its shareholders will not permit Ameren to rely on assertions from KJRY as to the assessment of harm to Ameren. Ameren's outside counsel must make an independent analysis for Ameren from the actual documents governing the lease transaction.

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On August 10, 2006, Ameren moved to hold KJRY's Notice in abeyance to allow Ameren to inquire into the details of the Lease Agreement through discovery and to enable Ameren and the Board to properly determine whether approval for this transaction may be sought under the Board's class exemption procedure. At the same time, Ameren filed its Motion for Protective Order and Request for Production of the Lease Agreement, subject to the provisions of the Protective Order. The Board issued a stay for the Notice on August 10, 2006.⁶ On August 23, 2006, the Board granted Ameren's Motion for a Protective Order.⁷ The Board stated that the Protective Order would allow parties to examine the Lease Agreement without compromising confidentiality.⁸ Paragraph three of the Protective Order states as follows:⁹

Disclosure of the Confidential Information shall be limited to outside counsel of Ameren Energy Fuels and Service Company solely for use in connection with this and any related Board proceedings, or any judicial review proceeding arising there from.

In addition, the Undertaking that is required to be signed by outside counsel under the Protective Order contains a broad damages provision as is customary in Board proceedings. This damages provision states that "money damages would not be a sufficient remedy for breach of this Undertaking and that BNSF and KJRY shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach." As discussed below, this

⁶ *Keokuk Junction Railway Company d/b/a/ Peoria & Western Railway - Lease and Operation Exemption - BNSF Railway Co*, STB Finance Docket No. 34918 (STB served Aug. 10, 2006).

⁷ *Keokuk Junction Railway Company d/b/a/ Peoria & Western Railway - Lease and Operation Exemption - BNSF Railway Co*, STB Finance Docket No. 34918 (STB served Aug. 23, 2006).

⁸ *Id.*

⁹ *Id.* at Appendix, Paragraph 3.

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provision has been deemed previously by the Board to be sufficient protection of sensitive confidential information so that no redactions are to be permitted from discovery materials.

Notwithstanding the fact that KJRY made no objection to the discovery request served on KJRY more than a month ago, on September 6, 2006, Ameren's outside counsel received a copy of the Lease Agreement provided by KJRY with significant redactions. In KJRY's Request to Lift Stay, KJRY states that only certain highly confidential financial arrangements and other provisions at BNSF's request were redacted giving the impression that limited redactions were made. However, the actual copy produced to Ameren's outside counsel is missing substantial information. A copy of the version received by Ameren's outside counsel is attached as Attachment 1 to this Motion.¹⁰ In addition to the redactions to the Lease Agreement all of the attached exhibits to the Lease Agreement were not produced. There are nine exhibits shown in the _____ and all of them are missing from the Lease Agreement produced to Ameren's outside counsel. The exhibits in the _____ are listed as follows:

¹⁰ While KJRY states that it has produced a copy of the redacted version and an "unredacted" version (with the exception of some redactions) to the Board, see KJRY Request to Lift Stay at page 4 and 5 at footnote 3, neither attachment was included with the filing served on Ameren. Thus, Ameren is attaching a copy of the Lease Agreement received by outside counsel to be assured that all parties are discussing the same version of the redacted Lease Agreement.

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In addition, the following 12 sections of the Lease Agreement were redacted:

On September 8, 2006, outside counsel for Ameren sent a letter to KJRY's counsel requesting the production of the unredacted and complete version of the Lease Agreement, including all exhibits, in accordance with the Protective Order. On September 11, Ameren's in-house counsel, James Sobule, called KJRY's General Counsel, Dan LaKemper, to discuss this matter. Mr. LaKemper returned Mr. Sobule's phone call on September 14 and Mr. Sobule attempted to reach Mr. LaKemper on September 15. On September 18, Mr. LaKemper and Mr.

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Sobule spoke again about the discovery problem with the redacted lease. It was agreed that Mr. Sobule would provide Mr. LaKemper a written summary of the issues concerning the redacted lease which was done on September 19th. Mr. LaKemper did not tell Mr. Sobule that KJRY intended to bypass the discussions and make its filing to lift the stay within hours of their phone call. Since the issue has now been placed back in the front of the Board by KJRY's action, Ameren is forced to seek a Motion to Compel KJRY's production of the unredacted lease and to request that the housekeeping stay remain in place until Ameren's outside counsel has reviewed the full terms of the lease agreement and assessed the full extent of the anticompetitive affects on Ameren from the proposed transaction.

SUPPORT FOR MOTION TO COMPEL

Under the Board's rules, broad and liberal discovery is allowed, providing that a party "may obtain discovery . . . regarding any matter, not privileged, which is relevant to the subject matter other than an informal proceeding." 49 C.F.R. § 1114.21. In addition, the Board's rules require a party to produce all responsive non-privileged information as long as the information requested is reasonably calculated to the discovery of admissible evidence. 49 C.F.R. § 1114.21(a)(2). In KJRY's request to lift the housekeeping stay, KJRY cites the test enumerated in *Washington Metropolitan Area Transit Comm. V. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977) ("*Holiday Tours*"). Ameren believes that satisfaction of this test would be a premature requirement. It is impracticable to request Ameren to provide answers to the Board on the Holiday Tours prongs since Ameren's outside counsel has not been provided a copy of the unredacted version of the Lease Agreement. However, Ameren will be irreparably harmed and public interest will not be served by lifting the Housekeeping Stay at this time.

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The Lease Agreement is clearly relevant to the case at bar. In order to respect the confidential nature of the Lease Agreement, Ameren requested and the Board approved the Protective Order containing a specific provision to allow outside counsel to review Confidential Information.¹¹ Ameren's outside counsel signed the Protective Order Undertaking and submitted it to KJRY on August 28, 2006.¹²

KJRY's refusal to provide Ameren's outside counsel a copy of the unredacted and complete version of the Lease Agreement is against the Board's established policy regarding discovery. Specifically, in *Grain Land Coop v. Canadian Pacific Limited and Soo Line Railroad Company d/b/a/ CP Rail System*, STB Finance Docket No. 41687 (STB served Dec. 1, 1997) ("*Grain Land Coop*"), the Board affirmed the Administrative Law Judge's decision to allow the complainant's outside counsel to review unredacted highly confidential waybill data and noted that rail carriers had been required to produce similarly sensitive data in previous proceedings.¹³ The Board found that such review of sensitive data by outside counsel or consultants was consistent with the protective order submitted in that proceeding which is substantively the same

¹¹ *Id.*

¹² On September 8, 2006, KJRY and BNSF provided written authorization for Ameren's in-house counsel to review the redacted version of the Lease Agreement. Ameren appreciates KJRY and BNSF's willingness to provide permission for Ameren's in-house counsel to review the more than 50 page redacted Lease Agreement (minus the exhibits). Ameren believes that it would be appropriate for a copy to be provided to the in-house counsel who has signed the Confidentiality Undertaking. Nevertheless, Ameren is only requesting that the Board order the production of a version of the Lease Agreement to Ameren's in-house counsel that may only have the financial numbers redacted.

¹³ *Grain Land Coop* citing, *Potomac Electric Power Co. v. CSX Transportation, Inc.* STB Docket No. 41989 (STB served Mar. 3, 1997); *Pennsylvania Power & Light Company v. Consolidated Rail Corp. et al.*, STB Docket No. 42195 (STB served Mar. 10, 1997).

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as the protective order in this proceeding.¹⁴ The Board held that “[e]ven in situations where rail carriers object to a complainant’s access to unredacted material due to its extraordinary commercial sensitivity, we have found that protective orders provide adequate safeguards from unauthorized or unintended disclosure.”¹⁵

The Board in the Grain Land Coop case noted the decision in CSX Corp. and CSX Trans., Inc., Norfolk Southern - Control and Operating Leases/Agreements - Conrail Inc. and Consolidated Rail Corp., STB Finance Docket No. 33388, Decision No. 32 (STB served Sept. 12, 1997) (“CSX/NS/CR”), in which the Board allowed coal shippers access to applicants’ confidential coal rate negotiations and contracts over a two year period. In that case, the applicant Railroads argued that disclosing such information to outside counsel, as set forth in the terms of the protective order, would not protect the highly confidential information they sought to redact. However, the Board rejected applicants’ argument, finding that “although outside counsel and consultants must exercise extreme care in preserving confidentiality, the highly sensitive nature of the information was not a sufficient reason to permit less than full disclosure to these individuals.”¹⁶ This established principle was used in *Grain Land Coop* where the Board allowed Grain Land’s outside counsel and consultants access to confidential information

¹⁴ In *Grain Land Coop* and *CSX/NS/CR*, the Protective Order provided for Public, Confidential and Highly Confidential designations. The Confidential designation was used for documents to be reviewed by in-house counsel and the Highly Confidential designation was used for outside counsel and consultants. The rail carriers in these cases were attempting to create a “Highly-Highly Confidential” designation by redacting information from documents produced under the Highly Confidential designation. This conduct has been repeatedly struck down by the Board.

¹⁵ *Grain Land Coop* at 7.

¹⁶ *Id.* at 8 (citing *CXS/NS/CR*. at 4).

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in light of the protective order that was in place.¹⁷ KJRY's assertion that Ameren's outside counsel would violate the terms of the Protective Order and use the information for "improper" purposes, see KJRY Request to Lift Stay at page 9 footnote 7, is unfounded and irresponsible. KJRY goes further to allege that Ameren's outside counsel wants to review the Lease Agreement "to gain some advantage in negotiations with BNSF" or review the Agreement "out of idle curiosity." KJRY Request to Lift Stay at page 9. These allegations are baseless.

Additionally, it is compelling to note that the information sought in Grain Land Coop was considered confidential as defined under 49 U.S.C. § 11904. Section 11904 protects certain sensitive shipper information contained in contracts and common carrier transportation. The information sought here are the terms contained in a Lease Agreement, which is the subject of a transaction being filed for approval by the Board.¹⁸ Such an agreement is not subject to the unlawful disclosure provision of Section 11904. Lease Agreements are not generally afforded the same level of protection by the Board as that of shipper waybills or other confidential carrier-shipper data. Notwithstanding the lack of a statutory prohibition on the disclosure of the Lease Agreement and notwithstanding the Board's established precedent which supports the production of an unredacted Lease Agreement to outside counsel under the Protective Order, KJRY has chosen not to comply with the discovery request.

Therefore, in accordance with established Board precedent, counsel to Ameren seeks a copy of an unredacted and complete version of the Lease Agreement. The Lease Agreement contains information which is essential to outside counsel's understanding of the true nature of

¹⁷ *Grain Land Coop* at 8. Also see CSX/NS/CR at 12.

¹⁸ While Lease Agreements are not required to be filed with the Board in contrast to trackage rights agreements when seeking authorization, the unredacted Lease Agreement in this proceeding must be produced.

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transaction proposed under the Notice, and the potential competitive harm Duck Creek may experience as a result of this transaction. The Protective Order in this proceeding provides sufficient and established protection to KJRY and BNSF for the protection of the confidential information contained in the Lease Agreement. As such, outside counsel to Ameren should be permitted to review the complete, unredacted Lease Agreement in accordance with the Protective Order and Board precedent. In addition, as stated in Ameren's unchallenged discovery request, Ameren requests a computer readable format of the Lease Agreement.

RESPONSE TO REQUEST TO LIFT HOUSEKEEPING STAY

KJRY claims that the "housekeeping stay is no longer warranted" because KJRY has "provided Ameren with the information necessary to assess the impact of the proposed transaction on it."¹⁹ This one-sided assessment is not grounds to support the lifting of a stay for a transaction that attempts to use the Board's class exemption for a transaction that might have serious anticompetitive and substantial pecuniary harm to a shipper such as Ameren. By refusing to produce an unredacted version of the Lease Agreement, KJRY has basically asked Ameren to take KJRY's word that Ameren will not be harmed.²⁰ Particularly in this day of heightened corporate governance, Ameren cannot agree to such an arrangement. Ameren must fulfill its fiduciary obligation to its shareholders and make a determination regarding the potentially harmful impact to Ameren's Duck Creek plant based upon the actual terms contained in the Lease Agreement.

¹⁹ KJRY Request to Lift Stay at 2.

²⁰ KJRY's refusal to produce an unredacted Lease Agreement, notwithstanding the Protective Order and the Board's clear precedent disallowing such redactions in similar situations is the root of any harm alleged by KJRY for any delay in this transaction. See KJRY Request to Lift Stay at 8.

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1. Ameren Has Not Had An Opportunity to Assess the Full Anticompetitive Impact on Duck Creek

As shown above, no redactions are permitted in documents produced under the Protective Order. In light of this clear precedence and in the interest of responding to KJRY's failure to produce an unredacted Lease Agreement in the quickest manner possible, Ameren did not provide a full analysis of the competitive harms contained in the redacted Lease Agreement in Ameren outside counsel's September 8th letter to KJRY as referenced in KJRY's Request to Lift Stay at page 7.

However, as shown in the timeline in the Factual Background, Ameren's in-house counsel had been in discussions with KJRY's counsel to discuss the competitive harms, yet KJRY decided to file its Request to Lift Stay within hours of one of those conversations and in the midst of Ameren attempting to gain an understanding of the Lease Agreement via private discussions. The substantial redactions (including 12 sections and all the exhibits) prevent Ameren from making a full assessment of the harm to Duck Creek. The redacted portions are contained in Articles and Sections of the Lease Agreement that discuss the full nature of the arrangement between KJRY and BNSF and the associated potential impact on Ameren. In light of the timing of KJRY's Request to Lift Stay and the fact that Ameren's outside counsel has only had access to a redacted version of the Lease Agreement, Ameren must interpret the remaining portions of the Lease Agreement as being harmful and anticompetitive.

PUBLIC VERSION

2. The Proposed Lease Agreement May Create An Anticompetitive Bottleneck for Duck Creek

As KJRY has admitted, the proposed transaction contemplated by the Lease Agreement will result in KJRY being the only carrier capable of serving the plant via the two different routes. These means that the proposed transaction will cause the Duck Creek plant to go from two separate and independent routes to two routes controlled by one railroad. In other words, KJRY would become the “bottleneck” carrier and the Duck Creek plant would become analogous to a “2-to-1” point. It is clear that the Board believes that, outside of a merger transaction, the Board does not have authority to remove existing “bottlenecks” without the need for a shipper to prove anticompetitive harm under what is known as the *Midtec* Decision.²¹ However, Ameren could fill pages of legal support showing the documented harms to shippers faced with a “bottleneck” and “2-to-1” situation and the eventual recognition by the Board that such anticompetitive harms must be mitigated or not permitted to be created as a result of a

²¹ The *Midtec* decision is *Midtec Paper Corporation v. CNW, et al.*, 3 I.C.C.2d 171 (1986), *aff'd*, *Midtec Paper Corp. v. U.S.*, 857 F.2d 1487 (D.C. Cir. 1988). See also, Section 11102: Is It The Answer To Competitive Access?-- Examining The Varying Standards Applied By The Surface Transportation Board When It Is Determining Whether To Grant Terminal Trackage Rights Access," William A. Mullins and Sandra L. Brown, *Journal of Transportation Law, Logistics and Policy*, pp. 333-344, Spring 1999, Volume 66, Number 3.

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merger transaction.²² The Board's precedent with respect to ameliorating or preventing competitive harm caused to shippers from the creation of "bottleneck" carriers or a "2-to-1" reduction in major consolidation transactions should not be lost in this similar but admittedly smaller transaction based upon carrier size.²³ Therefore, the Board must order the production of the unredacted Lease Agreement. In addition, unless the unredacted Lease Agreement can establish to Ameren and the Board that no competitive harm will be created or made possible via the proposed transaction between KJRY and BNSF, the transaction must not be consummated and the housekeeping stay must remain in place.

The second area of redactions in which Ameren must assume the worst-case scenario includes the substantial redactions from

²² See for example, the Board's, and its predecessor's, decisions and the underlying arguments asserted in the following proceedings: *Union Pac. Corp., et al. -- Control -- Missouri Pac. Corp.*, 366 I.C.C. 459, 574-76 (1982) ("UP/MP/WP"); *Rio Grande Industries, Inc. SPTA Holding, Inc. and The Denver and Rio Grande Western Railroad Company -- Control -- Southern Pacific Transportation Company*, Finance Docket 32000 (ICC served August 25, 1988) ("Rio Grande"); *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -- Control -- Chicago and North Western Transportation Company and Chicago and North Western Railway Company*, Finance Docket No. 32133 (STB served February 21, 1995) ("UP/CNW"); *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company*, Finance Docket No. 32760 (STB served August 6, 1996) ("UP/SP"); *CSX/NS/CR*, Finance Docket No. 33388 (STB served July 20, 1998); and *Major Rail Consolidation Procedures*, Ex Parte 582 (Sub-No. 1) (STB served June 11, 2001).

²³ KJRY has filed its Notice under 49 U.S.C. § 10902 because KJRY asserts that its projected revenues will remain at Class III levels. The ability of a rail carrier to use the shorter Notice provisions under Section 10902 rather than be subject to 49 U.S.C. § 11323 (merger and consolidations) for a lease transaction is based upon the size of the carriers involved or that will be created by the transaction. Thus, the merger precedent regarding "bottleneck" and "2-to-1" harm is equally applicable to both types of transactions.

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If this is the case, the transaction is anti-competitive. Again, without Ameren's outside counsel reviewing the unredacted Lease Agreement in order to fully evaluate the proposed transaction, the stay must be continued.

The third area of redactions that prevent Ameren from verifying the terms of the proposed transaction include the redactions

A fourth area of redactions that prevent Ameren from verifying the terms of the proposed transaction include the redactions in

PUBLIC VERSION

This is a clear competitive harm to Ameren particularly since Ameren invested a significant amount of money in rail infrastructure via its build-out to the KJRY in order for Ameren to gain competitive access to UP.

4. The Redacted Trackage Rights Agreement May Contain Anticompetitive Provisions

A fifth area of redactions that prevent Ameren from verifying the terms of the proposed transaction and any associated harm to Ameren include the redactions

²⁴ Mr. LaKemper conveyed to Mr. Sobule via an email on September 19 that the
However once again, Ameren asserts
that no redactions are permitted under Board precedent and this assertion by KJRY does not
satisfy Ameren's need and its right to independently assess any harm that may be caused by the
proposed transaction.

PUBLIC VERSION

it is impossible for Ameren to fully evaluate the proposed transaction, thus providing further evidence that the stay must be continued.

Finally, the withholding of all of the Exhibits to the Lease Agreement from Ameren's outside counsel is perplexing. This is especially true with respect to [REDACTED] which is referenced as [REDACTED] which is referenced as the [REDACTED]. However, [REDACTED] are equally necessary to Ameren's verification and analysis of the proposed transaction. As stated in [REDACTED] the Lease Agreement, the [REDACTED]

Therefore, [REDACTED] agreement must be reviewed in order to understand the agreement between the parties. Until Ameren's outside counsel has been afforded an opportunity to review the entire Lease Agreement and independently analyze the potential harm to Ameren, the stay must not be lifted and the transaction must not be consummated.

CONCLUSION

For all the foregoing reasons, the Board should grant Ameren's motion to compel the production of the unredacted and complete Lease Agreement and order such production to occur promptly upon issuance of the Board's decision compelling such production. Further, the Board should reject KJRY's request to lift the housekeeping stay and reconfirm that the transaction may not be consummated until a further decision by the Board is rendered which specifically permits the transaction to proceed.

PUBLIC VERSION

Respectfully submitted,

Sandra L. Brown / EDB

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FUELS AND SERVICES COMPANY***

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34918

**KEOKUK JUNCTION RAILWAY CO.,
d/b/a PEORIA & WESTERN RAILWAY
—LEASE AND OPERATION EXEMPTION—
BNSF RAILWAY COMPANY
BETWEEN VERMONT AND FARMINGTON, ILLINOIS**

**AMEREN ENERGY FUELS AND SERVICES COMPANY
MOTION TO COMPEL DISCOVERY AND
RESPONSE TO KJRY'S REQUEST TO LIFT HOUSEKEEPING STAY**

REDACTED LEASE AGREEMENT

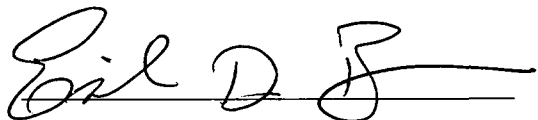
ATTACHMENT 1

**FILED UNDER SEAL AS A CONFIDENTIAL DOCUMENT PURSUANT TO THE
BOARD'S AUGUST 23TH PROTECTIVE ORDER**

CERTIFICATE OF SERVICE

I hereby certify that a copy of each of the foregoing PUBLIC and CONFIDENTIAL VERSIONS of the Motion to Compel Discovery and Response to KJRY's Request to Lift Housekeeping Stay was served on the following via Federal Express Overnight Mail on September 21, 2006:

BNSF Railway Company
2650 Lou Menk.
Fort Worth, Texas 76131
Attn: AVP Joint Facilities
AVP Short Line Development

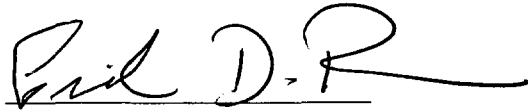
A handwritten signature in black ink, appearing to read "Erika D. Benson", written over a horizontal line.

Erika D. Benson

CERTIFICATE OF SERVICE

I hereby certify that a copy of each of the PUBLIC and CONFIDENTIAL VERSIONS of the Motion to Compel Discovery and Response to KJRY's Request to Lift Housekeeping Stay was served on the following via Federal Express Overnight Mail on September 21, 2006:

Daniel A. LaKemper, Esq.
General Counsel
Keokuk Junction Railway Co.,
d/b/a Peoria & Western Railway
1318 S. Johanson Road
Peoria, Illinois 61607
Tel: (309) 697-1400
Fax: (309) 697-8486

A handwritten signature in black ink, appearing to read "Erika D. Benson", written over a horizontal line.

Erika D. Benson